

A

731 ~~6.8.~~
75 3'

VINDICATION

OF THE

PROCEEDINGS

IN THE

C A S E

O F

Mr. *ATSCOUGH*,

O F

Corpus-Christi-College, Oxon.

L O N D O N :

Printed for T. WOTTON, at the *Three-Daggers and Queen's-Head*, over-againſt *St. Dunſtan's Church, Fleet-Street.*

M. DCC. XXXI.

THE
O A S E
M. ALCOVE

Carriage Building, Orono.

FOR SALE
This lot is for sale, and is situated in the town of Orono, Maine, and is one of the best lots in the town.

THE
CASE
OF
Mr. *AYSCOUGH*.

THE Case under Consideration is as follows : --- *Jan.* 16. 1727. Mr. FRANCIS AYSCOUGH was admitted a Probationer of *Corpus-Christi-College, Oxon.* It is material to observe, that he was then above ten Years Standing, had been all that Time a Disciple of the College, had taken two Degrees, and had been admitted into Deacon's Orders. All this without any Admonition, or apparent Dislike ; so that the President and Fellows had long seen and approved his Behaviour. He was soon after ordained Priest, with proper Testimonials of his good Behaviour ; and in *January*, 1728. he underwent a solemn Scrutiny of the whole House, and was unanimously admitted to his second Year

of Probation. He had never, since his taking his Master of Arts Degree, received any Injunction, Imposition, or Punishment, from the President, or any Officer, or Fellow of the College ; not the least Intimation was given him, that he deserved the Censure of his Superiors. However, when the second Year was expired, (*viz.* Jan. 15. 1729.) a Meeting of the Fellows was called ; and after some Debate, the Question being put, Whether Mr. AYS COUGH was a proper Person to be admitted Actual Fellow ? Four declared in the Affirmative ; the President and Seven in the Negative. Upon which, after three immediate Scrutinies, he was pronounced EXCLUDED, *without any Crime alledged, or Reason assigned.* ---- 'Tis observable, that though the Statute allows a *Quatriduum ante vel post diem Electionis*, yet the Meeting was called the last of those four Days ; and (contrary to usual Custom) in the Afternoon, without doubt to distress Mr. *Ayscough* as much as possible. --- After the first Scrutiny, the then Vice-President desired that the Second might be deferr'd 'till the next Day ; or, at least, that there might be the Interval of some Hours. Both these were denied ; no Time allowed to the Gentlemen to consider the Statutes, nor to Mr. *Ayscough* to defend his Character.

THESE

THESE Proceedings were thought so extraordinary by Mr. *Ayscough*, that he was resolved to appeal to the Lord Bishop of *Winchester*, Patron and Visitor of the College. Accordingly he presented his Petition, dated *Jan. 26.* His Lordship received it; and sent a Copy of it to the College, with a very kind Letter, dated *Feb. 3.* requiring an Account of their Proceedings. The Gentlemen concerned desired a Month to give in their Reply. His Lordship was surprized at the Delay; and by a Letter, dated *Feb. 19.* required them to give an immediate and explicate Answer. Soon after, two of the Fellows waited upon his Lordship, with what they called *An Humble Representation*: The Substance of which was, "To deny his Lordship's Jurisdiction
 " over them; to declare themselves the sole and
 " final Judges in the Affair; and that they were
 " accountable for their Behaviour to God alone.
 " If his Lordship was not satisfy'd with this, they
 " desired to be heard by their Council, as to this
 " Point." --- Accordingly his Lordship was pleased, by another Letter, dated *March 16.* to cite them to appear at *Chelfea*, *March 24.* 'Tis here to be observed, that all these Affairs were transacted by private Letters, his Lordship resolving to put the
 College

College to as little Expence and Trouble as possible.

WHEN the Day of Hearing was come, the Case was learnedly argued by Council on both Sides ; and the Bishop's Power was incontestably proved, both by the Statutes of the College, and the Laws of the Land, and by repeated Precedents from both Universities. After about three Hours Debate the Gentlemen submitted, and the Affair was ended. In about ten Days Time his Lordship sent down an Injunction in Form, commanding Mr. *Ayscough* to be restored, the Injunction to be registered, and the Registering to be certified to him ; ordering likewise the Costs on both Sides to be defrayed by the Persons concerned in the Exclusion ; those on Mr. *Ayscough's* Part being fixed to the Sum of Forty Pounds. Some Application was afterwards made in Abatement of Costs ; however, his Lordship saw no Occasion to alter his Commands in any Respect.

BEFORE I enter upon the Merits of the Cause, give me Leave to add, that as nothing was proved against Mr. *Ayscough*, either at the Time, or near seven Years before it, with regard to his Learning, good Manners, Religion, or any other Breach of the Statutes
of

of the College ; so likewise the Visitor received an ample Testimonial of his Character, under the Hands of several considerable Persons in the University, “ *That from a long personal Acquaintance with him,* “ *they believ’d him to be a Man of sound Principles, a* “ *virtuous Life, and good Learning; And that he had* “ *been distinguish’d for his steady Affection and Loyal-* “ *ty to the present Establishment.* Mr. Ayscough did likewise, of his own Accord, several Times assure his Lordship, and solemnly protest to him, that he was *orthodox in his Belief, and a faithful Son of the Church of England*; and a little after his Admission, sent him the following Letter, which I think proper to insert at Length, because of the Aspersions that have been thrown out against him in the University.

MY LORD,

Corpus-Christi-College,
April 8 1730.

“ **I** think it my Duty to acquaint your Lordship, that
 “ I was admitted to my Fellowship Yesterday in the
 “ Afternoon by the President, in a Meeting of the whole
 “ House. I hope we shall now give your Lordship no
 “ further Trouble. It is my Desire and my Design,
 “ (as I know it to be my Duty,) to live quietly and a-
 “ micably

" micably with the whole Society. I am so sensible,
 " My Lord, of the ill Effects of Quarrels and Animo-
 " sities in Colleges, and of their being so destructive of
 " Discipline, and all the good Ends, for which such So-
 " cieties were instituted, that I promise your Lordship,
 " rather to put up any Affront that may be offer'd to
 " me, than to raise or continue any Disturbances in the
 " Society. I really wish that my Expulsion, and every
 " Circumstance of it, could be entirely forgotten; and I
 " shall be so far from upbraiding the President or Fel-
 " lows with it, that, if possible, I will never mention it
 " to any of them. This, My Lord, I apprehend, will
 " be the properest Method of making my Acknowledge-
 " ments to your Lordship for your Goodness, in doing
 " me Justice in so speedy and effectual a Manner. I
 " want Words to express my self on this Occasion; but
 " as long as I live, I shall retain the most grateful
 " Sense of your Lordship's Goodness to me. Your Lord-
 " ship's Directions to me, when I last waited on you,
 " shall, for the future, be the Rule of my Behaviour;
 " and I shall always study to shew my self a faithful
 " Subject to his Majesty, and a dutiful Son of the Church.
 " My Attachment to the Government, I believe, was
 " never doubted of; but I am afraid I have been re-
 " presented as disaffected to the Church of England:
 " I beg Leave, therefore, to assure your Lordship, that I
 look

“ I look upon it, as the best and purest Church in the
 “ World ; that I firmly believe all its Doctrines, will
 “ always submit to its Ordinances ; and that my whole
 “ Life shall be employed in its Service. I beg Leave,
 “ My Lord, with Submission, to subscribe myself,

Your Lordship's

Most Dutiful Son,

And Obedient Humble Servant,

FRANCIS AYSCOUGH.

I SHALL now proceed to the Merits of the Cause ; and shall begin with the Injunction of Bishop *Morely* ; which, when fully and fairly represented, I cannot but think to be abundantly sufficient to determine the Controversy, if it be considered impartially. However, I shall after that endeavour to shew, how agreeable it is to the whole Course of their Statutes, and what Obligations the President, and all the Fellows, do by their Statutes lie under to observe it.

“ **G**EORGIUS *permissione Divinâ Winton' Episcopus, Collegii Corporis Christi in Universitate Oxon*
 “ *Patronus & Ordinarius, & ipsius Collegii omniumque*
 B “ &

“ & singularum Personarum, Possessionum Spiritualium
 “ & Temporalium, Jurium, Libertatum, & Privilegio-
 “ rum Supervisor, Observantiaque Ordinationum & Sta-
 “ tuorum dicti Collegii Conservator, ac ejusdem Visitator.
 “ Dilectis nobis in Christo Præsidenti, Vice-Præsidenti,
 “ Sociis, Scholaribus, & Ministris intra Collegium prædic-
 “ tum, tam præsentibus quàm futuris quibuscunque, &
 “ eorum cuilibet, Salutem, Gratiam, & Benedictionem.

“ CUM nuper ex Mandato Domini Regis, ad Peti-
 “ tionem Magistri Curtois, Disceptatio coram nobis habe-
 “ retur, jure scilicet an secus, præfatus Magister Curtois,
 “ post Biennium probationis, in Socium non admissus, &
 “ proinde à Collegio amotus & ejectus fuerit, auditis &
 “ perpensis omnibus ab utrâque parte, & pro Magistro
 “ Curtois, & contra illum respectivè allegatis, inspectis
 “ insuper & perlectis & inter se collatis Fundatoris vestri
 “ Statutis omnibus ad præsentem & pendentem tunc Li-
 “ tem quovismodo pertinentibus, animadvertimus multi-
 “ pliciter & graviter vos peccasse : Primo * * * * *
 “ * * * * *
 “ Deinde, quodd delictum ejus contra Methodum, & ultra
 “ Modum à Fundatore sive Legislatore vestro præscrip-
 “ tum, punire præsumpsistis : Tertio denique, quodd de
 “ Sensu Statuti in præjudicium Magistri Curtois allegati alii
 “ ab aliis finaliter dissentientes (inconsulto prius Visitatore
 “ vestro) judicialiter processistis. Hujus vero postrema
 “ irregu-

“ irregularitatis * * * * * omnes & singulos So-
 “ ciorum, imò & Præsidentem ipsum reos esse censemus ;
 “ Secundæ verò * * * * * illos solos, qui præfatum
 “ Magistrum Curtois protinus nullâ Admonitione præce-
 “ dente, ultimo supplicio afficiendum, à Collegio scilicet in
 “ perpetuum amovendum & excludendum, esse judicârunt, &
 “ de factò quidem (quantum in illis erant) amoverunt
 “ & exclusèrunt ; quam quidem sententiam à majori parte
 “ Sociorum in illum latam, quamvis (utpote temerariam
 “ & severiorem, quam quæ ex Mente Fundatoris vestri
 “ pro qualitate delicti ejus in illum pronunciari debuerat)
 “ jamjam abrogaverimus ; impunitum tamen (ut nôstis)
 “ non readmisimus aut in integrum restituimus, sed statuto
 “ priùs in illum exemplo, ad alios à consimili crimine de-
 “ terrendos satis (ut speramus) efficaci.

“ JAM vero quia Fundator vester suos in Episcopa-
 “ tu Wintoniensi successores, Collegii sui Visitatores esse
 “ voluit, ut observationi Statutorum ejus invigilarent,
 “ idque non solum puniendo & reformando, si quid per
 “ Omissionem vel Commissionem contra Statuti alicujus ge-
 “ nuinum sensum peccatum esset, sed etiam providendo nè
 “ quid omittatur aut committatur, quod aut omitti aut
 “ committi non oportuit, seu quod omissum vel commissum,
 “ puniri aut emendari secundum Statutorum exigentiam
 “ opus habebat : Quapropter ut pœnas infligendi pro de-
 “ lictis perpetratis, sic injunctiões faciendi nè delicta

“ perpetrentur successoribus suis, *Visitatoribus vestris*,
 “ idem Fundator vester potestatem dedit ; & hujusmodi
 “ *Injunctionibus* ut cum effectu pareatis vos omnes & sin-
 “ guli vestrum, (ipso *Præsidente* non excepto) sub penâ
 “ *Perjurii obstricti* estis.

“ NOS itaque prædictâ potestate freti, & illâ nuperâ
 “ (cujus meminimus) occasione inducti, paucas quidem &
 “ breves, sed utiles, & quodammodo, (præsertim ut nunc
 “ res sunt) necessarias *Injunctiones* transmittendas esse
 “ duximus.

“ ET primò quidem, quoniam nihil tam clarè aut tam
 “ perspicuè, vel dicendo exprimi, vel scribendo declarari
 “ potest, quin partim ex insitiâ, partim ex malitiâ homi-
 “ num, diversis imò & perversis *Interpretationibus* ob-
 “ noxium esse experienciâ quotidianâ comprobetur, idcirco
 “ ut Fundator vester olim præcepit, sic nos nunc iterum
 “ *Authoritate nostrâ Visitatoriâ*, firmiter injungimus, Ut
 “ quoties de Statuti alicujus sensu inter vos ambigitur,
 “ (ambigitur autem quoties de eodem ejus sensu inter vos
 “ omnes nemine contradicente non convenit,) nè præsuma-
 “ tis ulterius progredi, quantumvis major pars vestrum
 “ contrâ sentiat aut nitatur, priusquam consulto *Visitatore*
 “ vestro, quisnam illi videtur esse, vel totius Statuti de
 “ quo ambigitur, vel alicujus in illo *Clausulæ* verus, pro-
 “ prius, & geninus sensus, intelligitis ; in quo ut unusquis-
 “ que

“ que vestram acquiescat, (quantumvis propria ipsius
 “ Opinioni contrarietur,) à Fundatore vestro prudenter,
 “ æquè ac piè præceptum & constitutum est. Hoc enim
 “ modo & medio, ut omnium saluti & concordia, sic singu-
 “ lorum etiam Conscientiis, illarumque Paci, & Securi-
 “ tati sagacissimè prospexit ; nè quid scilicet a quopiam
 “ repugnante ejus Conscientiâ aut dictum aut factum esset,
 “ sive sic, sive secus privatim opinetur. Hanc autem
 “ tam providam, & prudentem, & piam Fundatoris vestri
 “ Ordinationem Vos (nè quid dicam durius) negligendo
 “ non exiguam nuper & Mibi, & Vobismet ipsis molestiam
 “ (quæ utinam cum Collegii vestri dedecore conjuncta non
 “ fuisset) facessere sategistis. Quare Vos iterum præsen-
 “ ti hâc injunctiōe nostrâ seriò præmonendos esse duxi-
 “ mus, palam & ex professo denunciantes, si quid ejusmo-
 “ di deinceps a Vobis in præfatæ Ordinationis præjudi-
 “ cium fiat, aut attentatum fuerit, illud Nos non pro
 “ simplici particularis alicujus Statuti transgressione, sed
 “ pro destinato ad universam Disciplinam subruendam mo-
 “ limine, & apertâ Visitatoris vestri contumeliâ habi-
 “ tuos.

“ QUONIAM verò in nuperâ illâ contra Magis-
 “ trum Curtois prolatâ a Vobis Sententiâ, non modo rem
 “ dubiam & ambiguam (non consulto prius Visitatore ves-
 “ tro) tractare aggressi estis, sed de illâ finalitèr (majo-
 “ rum vestram partem intelligimus) non solum temerè,
 “ sed

“ sed iniquè judicâstis, ac si secundum *Arbitrium vestrum*,
 “ & non secundum *Leges a Fundatore vestro latas de de-*
 “ *lictis & delinquentibus judicandum esset* : Idcirco secundo
 “ in loco *Decernimus & Mandamus*, nè posthâc unquam
 “ in delictis aut delinquentibus puniendis, vel contra *Me-*
 “ *thodum*, vel ultra *Modum a Fundatore vestro præscrip-*
 “ *tum ullatenus procedatur* ; Nevè quisquam sive *Socius*,
 “ sive *Discipulus*, sive *Scholaris* (una enim, & eadem, hoc
 “ quod attinet, est ex mente *Fundatoris vestri* horum om-
 “ nium ratio) tanquam ultimo *Supplicio dignus a Collegio*
 “ *excludatur*, nisi alicujus ex majoribus *Criminibus* ab ip-
 “ so *Fundatore specificatis*, & enumeratis reus & con-
 “ victus fuerit, aut post tres vicissim, & successivè repe-
 “ titas *Admonitiones*, & post totidem *infiictas*, & grada-
 “ tim auctas *Punitiones*, planè contumax, & prorsus in-
 “ corrigibilis esse inveniatur. Quod si contigerit quen-
 “ quam post hanc *Declarationem & Injunctionem nostram*,
 “ nullius ex majoribus *Criminibus* convictum, nec antea,
 “ aut non omninò, aut non toties quoties oportet admonitum
 “ prius & castigatum à Collegio amoveri aut expelli, sciat
 “ se justam appellandi causam habere, & certò certius a no-
 “ bis restitutum iri, idque quamvis communi & unanimi
 “ *Præsidentis & Sociorum omnium suffragiò amotus & ex-*
 “ *pulsus fuerit.* * * * * *
 “ * * * * *

“ *FINALITER*, *Præcipimus & Injungimus*, Ut
 “ omnes hæ nostræ *Injunctiones*, *Interpretationes*, *Decisio-*
 nes,

" nes, & Ordinationes Vobis (Præsidente, Vice-Præsidente,
 " Sociis & Scholaribus præsentibus in Aulam vel Sacellum
 " ex præmonitione Præsidentis, vel ipso absente, Vice-
 " Præsidentis, congregatis) palam, distinctè, & altâ
 " Voce perlegantur intra quinque dies à traditione ea-
 " rundem Præsidenti, vel ipso absente, Vice-Præsidenti,
 " factâ omnibus qui voluerint describendi copiâ, & inde
 " ut in Librum aliquem per Collegii Notarium conscri-
 " bantur & registrentur. Quatenus autem hujusmodi
 " Perlectio & inde Descriptio (modo quo præfertur, & in-
 " jungitur) factæ fuerint, intra octo dies à tempore recep-
 " tionis præsentium eorum, Nobis, à Præsidente, vel in
 " ejus Absentiâ Vice-Præsidente, plenè certificetur, perem-
 " ptoriè mandamus. Vobis denique & cuilibet vestrum
 " præcipimus & firmiter injungendo mandamus sub pænâ
 " Furis, & Statutorum vestrorum contemptûs, quatenus
 " hisce nostris Sanctionibus, Decisionibus, Declarationibus,
 " & Injunctionibus Statum, Commodum, & Honorem dicti
 " nostri Collegii concernentibus, sub modo, formâ, & limi-
 " tatione prædictis effectualitèr juxta Fundatoris vestri
 " mentem & sententiam intendatis, & pareatis cum Effectu.
 " — Nosque in Testimonium confirmationis præsentium, &
 " eorundem perpetuam, Deo volente, Ratificationem, Sigil-
 " lum nostrum Episcopale præsentibus apponi fecimus
 " Dat' Vicesimo die Mensis Junii Anno Dom. 1678. nostræ-
 " que Translationis Anno Decimo Septimo.

GEO. WINTON.

I WOULD

I WOULD observe upon this, in the *First Place*, That the Case of Mr. *Curtois*, which occasioned this Injunction, is the same with that of Mr. *Ayscough*. Both of them were denied their Actuality, at the End of their two Years Probation, in a Meeting of the President, and all the Fellows then in Town. Mr. *Curtois* was excluded by eight of the Fellows, against the President and three more; Mr. *Ayscough* by the President and seven of the Fellows, against the Vice-President and three more.

Secondly, THAT in the Case of Mr. *Curtois* this Injunction was submitted to by all the College; and that the Persons who had turned out Mr. *Curtois* solemnly begged the Bishop's Pardon, for proceeding against the Course of the Statutes, in excluding him without a sufficient Cause. — This Injunction was then registered; and it does not appear that any of the College, for above fifty Years, found any Fault with it, or presumed to act against it. And though Bishop *Morley* has had four Successors, (before whom they might have laid their Grievances, if they had thought there were any in that Injunction, and have desired the Repeal of it.) yet nothing of that Kind has been done.

Thirdly,

Thirdly, THAT when Bishop *Morley* summoned the College to appear before him, none of them denied, or disputed his Power to receive an Appeal in that Case, or pleaded that they were the *final Judges*; and much less did they claim an *Arbitrary Power* to themselves, without convicting him of any Fault, or so much as asking him, Whether guilty, or not : But they *did* convict him of Faults, and of a pretty high Nature ; and such as might give honest and sober Men a very ill Opinion of him. However, because they were not such as the Statutes of their College reckon among the *Majora Crimina*, the Visitor thought fit to restore him, after he had solemnly, in the Publick Hall, begged Pardon of God, and the College, upon his Knees.

In the last Place, I beg Leave to observe, that the Visitor, in order to prevent all Controversies about this Matter for the future, and to explain the general Words of the Statute *De Admittendis*, plainly declares, That the President and Fellows have no *Arbitrary Power* to remove any Persons of the Foundation out of the College ; and that they are not the final Judges in those Matters. And he en-

joins them, That for the future, they shall remove none, but such as are convicted of being guilty of one of those Crimes which the Founder, in his Statutes, calls *Majora Crimina* ; or else such as have been thrice admonished and punished, in the Method of the same Statutes, for those which are called *Minora Crimina*. He also further declares, That if any Person, for the future, shall be removed from the College without this preceding Discipline, he shall, upon an Appeal to him, be certainly restored, though he were excluded by the unanimous Consent of the President, and every one of the Fellows,

THE next Thing now to be considered, is, What Power the Visitor had to make such an Injunction as this ; and what Obligation the College lies under to obey it.

IN explaining this Matter, I shall not insist at large upon the Power of Visitors, or the Precedents, Examples, and Legal Determinations, that have been made about it : But, intending to be as short as possible, I shall confine myself only to their own Statutes.

THE

THE first Thing that I would observe under this Head, is, That the Founder has made the Visitor the supreme Interpreter of all their Statutes ; and has ordered expressly, that if any Controversy does arise in the College about the Sense of any Statute, and they do not agree it among themselves within eight Days, that then they shall not presume to proceed, 'till they have heard the Visitor's Opinion about it. And he expressly requires, that when the Visitor has given his Opinion, they shall all be bound to obey it, and put it in Execution, under the Pain of Perjury, and being turned out of the College. (Conclus. Statut.) "*Cujus quidem Domini Episcopi Determinationi, Interpretationi, & Declarationi super prædicto Dubio ita ut præfertur Disputato, ac ad Eum delato faciendis, Præsidentem, Socios, & ceteros omnes nostri Collegii obtemperare volumus, & cum effectu parere sub ipsorum debito Juramento Collegio nostro præstito, & pena Amotionis perpetuæ a nostro Collegio ipso facto.*"

BUT this Matter is still carried further by the Oaths which the President, and every Fellow and Scholar, are bound to take at their Admission into their Places. As to the Oath of the President, I

would observe, that after a long Declaration of his Resolution to keep all the Statutes, and to suffer no Power upon Earth to dispense with them, he proceeds. - - But, *notwithstanding this*, I will effectually obey *All* the Interpretations, Injunctions, Declarations, and Expositions of the Bishops of *Winchester*, Successors of the Founder, &c. *although they are contrary to my own Opinion.* (Cap. iv.) “ *Interpretationibus tamen, Injunctionibus, Declarationibus, & Expositionibus per Reverendos in Christo Patres Domini Fundatoris Successores, Episcopos Winton’, super dubiis Statutorum, emergentibus, ac secundum formam in iisdem descriptam disputatis, ac ad Eos delatis, faciendis obediam, & cum effectu (etiam si meæ Opinioni adversentur) parebo.*”

(Cap. xi. Cap. xiii.) THE Oaths which the Fellows and Scholars take at their Admission, are very much the same with this, except, that in that of the Fellows there is a little Addition: “ *Et eis absque ulteriori disquisitione, disputatione, aut contradictione (etiam si meæ Opinioni adversentur) cum effectu parebo.*”

I WOULD observe upon this Oath in general, that this is a Matter which the Founder lays great Strefs

Strefs upon, because every President is bound to take it three Times, and every Fellow twice. I would also further observe, that the Visitor has a Power not only to give a literal Interpretation of the Statutes, but also to make such Orders and such Injunctions as he shall judge necessary for the due Execution of them. And indeed Matters of Practice cannot well be otherwise explain'd, or Doubts, with relation to Practice, be cleared any other Way, than by enjoining how they ought to act for the future with regard to that Statute about which the Doubts were raised. It is also further clear, from these Oaths, that when the Visitor shall have made such Injunctions, the President, and all the Fellows, are bound to obey them without further Dispute, *though they should happen to be contrary to the Opinions of every one of them.*

I CANNOT but hope, that from what has been said it will plainly appear, that Bilhop Morley had a Power, by their Statutes, to make the Injunction; and that the President and Fellows were strictly in Conscience obliged to obey it. --- But since some Objections have been raised, I shall proceed to consider the chief of them.

THE first I think proper to take Notice of, arises from a Statute which, upon another Occasion, I have already quoted ; where the President and Fellows are expressly forbidden, under the Pain of Perjury, and Loss of their Places, to admit any *New Statutes*, though made by the Visitor. “ *Quod si*
 “ *que Nova per Successorem nostrum Winton’ alium*
 “ *vel alios quoscunque edantur vel statuantur, Eis no-*
 “ *lumus aliquem nostri Collegii detineri, astringi, aut*
 “ *obligari ; sed ab Eorum observantia Presidentem, &*
 “ *ceteros omnes nostri Collegii auctoritate nostrâ exi-*
 “ *mimus & liberamus, & Eis omnibus & singulis ne*
 “ *alicui ejusmodi Statuto & Ordinationi pareant, aut*
 “ *eam quovismodo admittant sub pœnâ Perjurii, & a-*
 “ *motionis perpetuæ a nostro Collegio ipso facto inhi-*
 “ *mus.*”

As to this Objection, I think it by no Means hard to give a very clear Answer to it, *viz.* That there is, in the Course of their Statutes, a plain Difference between making *New Statutes*, and giving Orders, Directions, and Injunctions, for the due and good Execution of the *Old* ones. And therefore we may observe, that the Founder himself, immediately after the Words quoted, proceeds to that
 Part

Part of the Statute, which I have already mentioned ; wherein he requires them, that in any Case of Difference of Opinion among them, about the Sense or Meaning of any of their Statutes, (which, as I have already observed in *Practical Matters*, is, in Effect, to know how they should be executed,) they should apply to their Visitor ; and, under the utmost Penalties, enjoins them to submit to such Declarations and Determinations as he shall think proper.

I WOULD observe further, that in this very Chapter the Founder strictly requires, that the *College* should not presume to make any *New Statutes* ; yet a little after it he permits, That if any Person of the College proposes any Thing to them, that they apprehend will tend to good Discipline, and be for the Advantage and Profit of the Society, and be *not* against any of their Statutes, then the President and Fellows *may* order and appoint such Thing or Things to be observed under proper Penalties ; and such Orders are to be in Force till they shall be revoked by the same Authority.

As to the Injunction now under Debate, there is not the least Pretence to call it a *New Statute* ;
it

it being apparent, from what has been already said, and from the whole Matter now in Controversy, that it was only an Interpretation of the Statute *De Admittendis*. — The Words of which Statute, as far as they concern the present Case, are these:

“ *Conscientias tamen Præsidentis, si adsit, Vice-Præsidentisque, & Sociorum Graduatorum omnium prædictorum apud Deum in hac parte gravius oneramus, ut cessantibus omnimodis odio, amore, invidiâ, acceptione patriæ, personæ, prece vel pretio, cæterisque coloribus, occasionibus, & causis postpositis quibuscunque, in nullo admittendum, aut approbandum consentiant, nisi quem speraverint, & firmiter crediderint in Eo Collegio, ad Dei Honorem, & profectum Studii Scholastici cum effectu posse, & velle perficere; nec contra quempiam horum Scholarium ejiciant, aut improbent, nisi de cujus Moribus, Ingenio & Profectu omnino diffidant, aliquove notorio, & insigni crimine irretitum, reum aut obnoxium crediderint.* Cap. 12.

THE Words of this Statute are very general, and when they come to be put in Practice, admit of several Difficulties. The Visitor therefore has in his Injunction so clear'd them, that they cannot easily, for the future, be at a Loss how to act.

----- The first Difficulty to be consider'd, is, That
since

since he so strongly operates their Consciences to proceed with Justice in admitting, or not admitting Persons into Actuality, whether he means the Matter shall entirely depend upon their own private Opinions, without any Proof or Evidence? or whether he intends their Consciences should be informed by proper Evidence? and that from that Evidence they ought to form their Judgment of the Fitness or Unfitness of the Person to be admitted? The Visitor has by his Interpretation resolved this Question, and declares, *That they should not at Will, or Pleasure, turn out any Body, but proceed upon proper Enquiry into Facts, and what had been their Conduct in the College, during the Time of their Probation.* An Interpretation certainly not contrary to the Literal Sense of the Statute; and I cannot but think all reasonable and impartial People must say, that it is agreeable to Justice, and the Course of Justice in the World.

THE next Difficulty is, Whether by Virtue of the same general Words, they are made the supreme and final Judges? or whether a Person that thinks he suffers by what they have done, may not appeal to the Visitor, and desire his Aid and Assistance to restore him? ---- This is a Question

D

which

which naturally arises from the general Words of the Statute ; and the Visitor has resolved it, by declaring, *That they are not the Supreme Judges*, but that Persons grieved may appeal to him ; and that they shall be relieved by him, if unjustly turned out.

ANOTHER Difficulty is, That since the Statute does not particularly direct them how to proceed in taking Evidence ; nor direct them fully what Evidence, or what Facts shall be judged sufficient to instruct them, whom they ought to admit, or whom they ought to refuse ; the Visitor has therefore explained this Matter, by the Course of the other Statutes, and the Discipline prescribed by them for the Government of the College. Accordingly he enjoins, that Probationers should not be refused their Actuality, unless they were found guilty of one of those which the Founder calls *Majora Crimina*, or thrice convicted of one of those he calls *Minora Crimina*, and still remained *unreformed* ; and by that Means, were to be considered as Persons to be *despaired of*.

WHAT has been said upon this Head I cannot but think may be sufficient to answer this Objection,

tion, that what the Visitor has done, was making a *New Statute*, he having done nothing more than explained Doubts and Difficulties, which naturally arose from the general Words of an *Old One*. And though this may be enough to clear the whole Controversy without enquiring any further, whether what he has done be reasonable, or unreasonable ; because *they are all bound under Pain of Perjury and Expulsion, without any further Disputation, to obey the Interpretations and Injunctions of the Visitor, though contrary to their own Opinions* : However, since it has been thought fit to enter into this Enquiry, I shall proceed to take notice of those other Objections which are most material.

It is objected then, That though the President and other Officers are requir'd, upon any Complaint or Scrutiny to enter into Examination of Facts, and to take Evidence, and determine upon the Matter, according to what they find in that Evidence ; yet when the President and *All* the Fellows meet, they have no Power to do it. --- In answer to this, it may be sufficient only to ask, Who told them they had no Power ? Does any Statute say they shall not do it ? If there be any such, I cannot find it. And if they are not forbid, the

very Nature of the Thing requires that they should do it, unless they are all unanimous for admitting him. If their Founder makes them *Judges*, he does by that give them Power to do the Office of Judges, which is, *not to condemn any Body without Hearing, and without Proof and Evidence against him.* --- But to what Purpose did the Founder allow them four Days before, or four Days after, if he did not mean that they should examine and enquire? Was all that Time to be spent in three single Scrutinies, that might be done in Half an Hour, and could not well hold longer? Let us suppose in Mr. *Ayscough's* Case, that they had begun their Meeting at the Beginning of the four Days, and finding that they were not like to be unanimous, but that Objections would be made against his Admission, *Could* they not, and *should* they not have enquired what Admonitions he had received, and have sent for the Books wherein they ought to have been register'd? And if they had found that he had been thrice admonish'd, then to have further enquired, whether, and what Signs of Repentance he had shewn? If nothing of this appeared, they might see whether any Body accused him of any of the *Majora Crimina*; and if they thought that they had not Power to enquire into that themselves, they
might

might have had Time to desire the President and proper Officers to make the Enquiry. Can they pretend that any one Part of this Proceeding is contrary to any one of their Statutes? How therefore could they presume, *contrary to the express Declaration of their Visitor, as certainly contrary to the Intention of their Founder, and as contrary to the Fundamental Rules of Justice*, to turn a Man out of the College, and by that to deprive him of what he had been waiting twelve Years for? To deprive him, I say, of his Maintenance, deeply to slur his Reputation, and to do all that they could to hinder his Preferment in the future Part of his Life? and all this without his having been, during his Probation, convicted of any one Fault, either great or small, or being once admonished, *or so much as asked whether Guilty, or Not Guilty?*

It may be fit to be observed, that Mr. Ayscough was not chosen Probationer, as they are in most other Colleges, where they may be *freely* admitted, or rejected; but had a *Right* to challenge it, as the *Senior Master of Arts* among the Disciples; as appears by the Statute *De Qualitate & Circumstantiis eligendorum in Scholares biennio probandos*. In which are these Words: *Ad gradum Magistratûs in Artibus admissos quibuscunque externis, & domesticis aliis pro-*
ferri

ferri & in loca proximè vacatura, eo ordine quo sunt seniores, eligi, admitti, & suffici decernimus. By which we see, that he had a good *Right* to be admitted, and could not be refused without proper *Objections* ; and in that *Case*, he might have appealed to the *Visitor*, to have an *Enquiry* made, whether the *Reasons* of his *Refusal* were good, or not. And therefore, when *he was admitted*, it is not to be imagined that he could be removed in an *arbitrary Manner*.

MERE Will and Pleasure, or the private Opinions that Persons are apt to conceive of one another, cannot be esteemed sufficient to deprive Men of what they have a *Right* to ; which *Right* Mr. *Ayscough* certainly had to his Fellowship, supposing he kept the Statutes of his Founder, as appears plainly from the whole Body of the Statutes, and the Discipline appointed by them in the College, and the Tendernefs which the Founder frequently expresses for every Member of the Society, which he calls his *Alvearium*, and requires that no one should be turned out of it, except he be guilty of Breach of the Statutes. It is remarkable, that the Founder in the Conclusion of his Statutes has these Words : *Quocirca qui nostras Institutiones & Ordina-*
ti nes

tionēs prædictas spreverit aut violaverit, is cupimus & præcipimus puniatur, vexetur, & pœnis statutis acerbissimè citra veniam affligatur. Qui autem Eas inoffensè, inconcussè, & quoad poterit integrè servaverit, servandasque curaverit Is in nostro Alveario tantisper tutus, immunis, quietus, honoratus degat & pascatur. These Words being a Conclusion of his Statutes, ought to be considered as a Review of the Whole, and may serve to explain all that has been said in them upon this Point, who shall be kept in, and who shall be turned out of the College.

AND indeed, if mere Will and Pleasure, and private Opinion, without Proof, will deprive Men of what they have a Right to, I am much afraid there would be very little Justice in the World. How often do Men conceive ill Opinions of one another, quite without Reason, either from false Reports never enquired into, or from private Quarrels raised by Mistakes perhaps on both Sides, or from Party or Faction? And how often do these Things deceive Persons, who in the Main are good, and mean well? If this was the Rule to act by, I am afraid the Consequences of Parties among us would be very fatal. I do not say, there are such Parties in our Universities; but it is certain, that such there are in the Kingdom; and many
People

People say, they are there too. But I would hope that they would so watch over themselves, that this should never influence their Proceedings on either Side. --- These Thoughts put me in mind of the Case of *Archbishop Tillotson*, one of the wisest and best Prelates we ever had in *England*; who was violently cried out against by a large Party among us, as a *Socinian*; and had he been at the mere Will and Pleasure of that Party, very probably had been turned out of his Preferment for it: Whereas from the whole Course of his Sermons, published during his Life, or after his Death, it appears, that hardly any Man had ever preached better, or more against them, than he had done.

IT is objected further, that no Appeal ought in this Case to lie to the Visitor; but that the College are the final Judges, because the Founder does in a strict Manner *onerate their Consciences*. ---- In answer to this I would observe, that those Words do indeed prove that the Founder had a very tender Regard, on one Side, to the Good of the *College*, that unworthy Persons should not be admitted; and, on the other, to the Good of his *Probationers*, that without very substantial Reasons they should not be rejected. --- And this, I think, is all that they prove; at least I cannot find any Reason to
make

make me so much as suspect, that the Founder intended, by Virtue of these Words, to make them the *final Judges* : Because the Conscience of a *subordinate* Judge is as much onerated to do Justice, as that of a *final* one. A Justice of Peace, or the Judges of *Westminster-Hall*, are strictly tied to do Justice; and yet none of them are *final Judges*. And there is great Reason that it should be so; because, though the Person who is injured by them may have Redress in a superior Court, yet he may in the mean Time suffer great Evils and Inconveniencies. What these Words, *Gravius oneramus Conscientiam*, may signify in a particular Commission given to a Person by a supreme Power, such as a *Pope*, or an *Arbitrary Prince*, I would not at present enquire into : But this is not the Case here. Here is a Society of Men, who have a large Body of Statutes to be governed by, over whom their Founder has appointed *another Person*, who has a Power to visit them, and call them to account for what they do; who has a Power to *interpret* every one of these Statutes, by which they are to act; who is *Patron and Protector of the College in general, and of all its Members*; who have by that Means a Right to appeal to him, if they are injured. --- And therefore I cannot see the least Reason, why the

strictly obliging such Persons to act with Conscience, should take away *his Power of Judging*, or *the Right of any one Person in the College to appeal to him*, in case he suffers unjustly. And, by all I ever could hear, no Instance *can* be produced, where these Words have made any Persons final Judges, under such Circumstances as these are.

I BEG Leave further to make a short Observation, or two.

THE first is this, That the Words in the Statute *De Admittendis*, do evidently want Explication, and without it, may bring the wisest and best Men into Perplexities and Difficulties, not easy to be got over. --- The Words on the one Side require, that they should admit *no* Person, but whom they firmly believe will act for the Honour of God, and effectually be a Proficient in Learning: On the other Side, they are to reject *none* but such, of whose Good-Manners, Parts, and Proficiency in Learning, they altogether *despair*, or whom they believe involved in some notorious and great Crime: Any one may observe, that there is a pretty great *Medium* between those two Extremes. How often may it happen, that Persons may stand Candidates
for

for Actuality, whom they cannot firmly believe *Good*; nor, on the other Side, think so *Bad*, as to be absolutely *despaired of*? And yet they must *All* be either admitted, or rejected. --- And, therefore, I cannot but think that the Visitor has been very kind to the College, in giving such an Interpretation as puts them into a plain, easy, and consistent Way of Acting. He refers to the Discipline of the College, and determines, that *they* shall be esteemed fit to be admitted, who have undergone none of that Discipline, or who have been mended by it: On the other hand, *they* shall be rejected, who have undergone the Discipline, and have not been mended by it, and for that Reason are to be *despaired of*.

IN the next Place I would observe, that as this Injunction evidently tends to prevent all Injustice, that possibly may arise from Faction, Party, or private Enmity, and gives Ease of Mind and Security to all such Probationers as resolve to be good, and sober, and mind their Studies; so it does as evidently tend to the Promotion of the Discipline of the College: Because the President and Fellows will plainly see, that if there be any Persons among them which they want to get rid of, there is no

other Way than by being vigilant in executing *that* Discipline ; which if they execute as they ought, they *may* get rid of them, or (which is much more desirable) be the Means of their Reformation.

THIS is all that I think need be said, with regard to this Controversy. For though several other Objections have been made, which I have not taken notice of, it was not because I thought they could not be answered, but merely because I thought it needless ; and because whoever will attend to what has been already urged, may easily of himself be able to answer any of those Objections. --- The whole *Merit* of the Cause does, in Truth, lie in a very narrow Compass : It depends upon this, *That the Injunction before mentioned was made by the Visitor ; That that Injunction evidently decides the Case of Mr. Ayscough ; That the Visitor had a full Power to make it ; and, That the College were bound by the strictest Oaths and Obligations to obey it.*

THERE are one or two Things remaining, which may be fit to be taken notice of, before I conclude, not relating to the Cause itself, but mere Reflections upon the Conduct of the Visitor.

THE

THE first is, That he treated them with Roughness, and was more zealous in speaking in the Cause, than they think became the Impartiality of a Judge. --- In answer to this I would observe, that though the Visitor, before he sent his first Letter to them, had looked over their Statutes, and had well weighed and considered them, and evidently saw that they were in the Wrong ; yet he wrote to them *in the softest and gentlest Manner*, hoping that by that Time they had considered the Matter too, and were sensible of their Fault ; which if they had been, the Affair would have been ended without any Charge, or running the Risque of any other Danger. He was indeed surprized, when he received their Answer ; which desired a Month's Time to give a Reason for a Fact, which they ought not to have committed, without having a ready Answer at the Time. This made the Visitor suspect that they were trying to find out Ways to *evade* his Authority, and to carry the Cause into some other Court. However, when they did at last come up with their *Representation*, though it was such as the Bishop had Reason to resent, yet he received them civilly, and told them, That he desired to talk with them not as a Judge, but

as

as the *Father of a Family*, which their Founder had made him. He said he had well considered the Case, read over their Statutes, and taken good Advice about it; and, upon the Whole, (as far as he could apprehend,) did believe they were in the Wrong; and was therefore desirous to talk the Matter over with them, to prevent any further Inconveniencies that might arise. Instead of this, they desired to be heard by their Council, which was granted to them; and so the Conversation ended, *without one harsh or violent Word from the Visitor.*

WHEN the Matter came to a publick Hearing, they began with putting into the Visitor's Hands a *Solemn Protestation* against his Authority; which made him judge, that it was then necessary to *alter* his Conduct towards them; and that out of *Mere Tendernefs*, for fear they should be encouraged obstinately to persist, and force him at last to *expel* them the College, which he could not have avoided doing, had they persisted, and which he might have done as it was, for so notorious a Breach of an Injunction which, by their Statutes, they were bound to obey, "*Sub pœnâ Perjurii & amotionis perpetuæ a Collegio ipso facto.*" I shall
not

not at present, enter into the Consideration of the Force of these Words, *IPSO FACTO*; but (if I am rightly informed) it greatly concerns the Gentlemen of the College to *consider it well*, that they may never come into such Circumstances again.

THE last Objection that I shall take notice of, is that about giving of *Costs*. It has already been observed, that the Sum was *Forty Pounds*, which, I verily believe, was not so much as Mr. *Ayscough* actually expended, and much less did it answer all the Trouble, and Vexation, and Slander, that was brought upon him by an Action so notoriously unjust. And, indeed, had the Visitor *not* appointed it, they would have been bound, both in Honour and Conscience, to do it of their own Accord. It is true, that it does not appear that Bishop *Morley* adjudg'd Costs in the Case of Mr. *Curtois*; and I am perswaded, that had the Cases been the same, the *present Visitor* would not himself have given Costs. But the Cases, in this Respect, were exceedingly different; Mr. *Curtois* was guilty of Faults, which tho' they did not quite deserve Expulsion, yet deserved all the Trouble and Charges he had been at, and the Humiliation which he receiv'd besides, by being oblig'd solemnly and publickly to beg Pardon of God and the College for what he had

had done. — But besides this, the College did not, in the Case of Mr. *Curtois*, deny the Visitor's Power, as they have done now; neither were Matters *then* so cleared as they *now* are. The Statute *De Admittendis*, was not interpreted till after *that* Fact was committed: But on the contrary, in Mr. *Ayscough's* Case, *the Visitor's Authority was obstinately denied*; Mr *Ayscough* was turned out without any Fault alleged, contrary to a plain Interpretation of the Statutes, contrary to a solemn and clear Injunction, which they were bound to observe under Pain of Perjury and Expulsion, *ipso Facto*. What would not Bishop *Morley* have done, had this happened in his Time? And therefore they have great Reason to be thankful to the present Visitor, That instead of declaring all their Places to be void, he was content to order them to pay five Pounds each, to make some Amends to an innocent Man for so great an Injury.

F I N I S.